FOOD CODE

Questions and Answers

This is a draft document created for training purposes. It should not be considered a totally accurate explanation of the FOOD CODE or the Michigan Food Law of 2000. These questions and answers should be used in conjunction with the FOOD CODE and the Food Law of 2000. The answers do not necessarily reflect the official policy of the Michigan Department of Agriculture.

Chapter 1: Definitions

(40) Highly Susceptible Populations

Is this definition for "highly susceptible populations" restricted to the examples given? These people might eat regularly in a restaurant!

The examples given are just illustrations, and the definition is not limited to those examples. However, the definition is limited to health care, assisted living, and custodial care facilities.

It is true that the general population includes people of all ages and health conditions, including those who may be immunocompromised. However, the definition, "highly susceptible populations," is provided so the FOOD CODE may specify requirements for facilities that specialize in serving highly susceptible populations, such as hospitals, nursery schools, homes for the aged, nursing homes, assisted living homes, and day care centers. These special requirements do not apply to restaurants and retail grocery stores that serve the general population (which includes some highly susceptible individuals).

(61) Potentially Hazardous Foods (PHF)

The FOOD CODE states that a potentially hazardous food does not include an air-cooled hard-boiled egg with shell intact. At what point does the shell egg stop being potentially hazardous? Is rapid cooling required or does the exemption start after the temperature passes 165°F? (i.e. after which point the egg could sit out at room temperature).

Rapid cooling of properly cooked hard-boiled eggs is not required, and these eggs may be held unrefrigerated. However, the elimination of pathogens achieved by properly cooking a shell egg can be negated if new pathogens are drawn into the still hot egg placed in relatively cooler water.

Can a hard-boiled egg be cooked without cracking the shell? Is the inspector going to look at every cooked egg for cracks?

Chefs advise placing fresh eggs in ambient temperature water and raising the egg and water temperature simultaneously to minimize cracking hardboiled eggs. Only penetrating cracks, not surface spidering, is considered a breach of the barrier.

Are both raw and cooked onions in oil potentially hazardous foods?

Yes.

Is garlic & oil still a potentially hazardous food (PHF) if the garlic used is powdered or has a low pH?

If the garlic and the mixture are processed to reduce the A_w value to 0.85 or less (or a pH of 4.6 or below), then the food is no longer considered a potentially hazardous food. The processing must consistently result in proper values throughout the food. Ultimately, it is up to the manufacturer to demonstrate the safety of a food product in question.

According to the FOOD CODE, a PHF includes a food of plant origin that is heat-treated. Are baked goods such as focaccia bread or pies and desserts with fresh, canned or frozen fruit now considered PHF?

Intact fruits and vegetable cells have complex natural defense mechanisms that are essentially destroyed by heat treatment. After heat treatment, many foods of plant origin will support rapid growth of toxigenic organisms. However, heat treating a fruit or vegetable does not automatically create a PHF, since other the factors must be considered, particularly water activity and pH. For example, many fruits have a pH below 4.6 (notable exceptions are watermelon, cantaloupe, and other melons); pie filling often contains enough sugar to lowers the water activity below 0.85; and most breads also have a water activity below 0.85.

In addition, food products containing heat-treated fruit and vegetables can be made non-potentially hazardous by use of an approved preservative or other barrier. Section 3-502.11 requires a variance and a HACCP plan when food additives are used as a method of preservation. Such food may require laboratory testing to verify that the product will not support rapid and progressive growth of infectious or toxigenic microorganisms.

What proof does a regulator need to accept water activity & pH conditions as evidence that a food is NOT potentially hazardous? Example: an establishment claims the house salad dressing has a low pH.

We do not anticipate that regulators will be checking water activity and pH levels during routine inspections in the immediate future. Operations that choose to use pH and water activity instead of temperature control to ensure product safety should be prepared to provide regulators with proof of analysis by an independent laboratory which indicates that food in question meets the FOOD CODE definition of a nonpotentially hazardous food.

NSF Standard 75 offers a convenient way to identify products, which were traditionally considered potentially hazardous, that can safely be stored at ambient temperatures for a specified length of time. If certified by NSF, these products will carry the NSF registered Mark on the product packaging. Currently, the certification is only available for bakery products. If you would like more information on NSF Standard 75, please contact NSF, International at 1-800-NSF-MARK.

Give examples of a non-potentially hazardous food as defined in 1-201.10(61)(c)(VI).

Apple Cider -- the pH of cider, which is usually below 4.6, prevents the rapid and progressive growth of disease causing organisms.

Dry breakfast cereal -- due to its low water activity, is not a potentially hazardous food.

The fact that the foods in both of these examples have been linked with outbreaks highlights the fact that nonpotentially hazardous foods can still become contaminated with sufficient numbers of pathogens to cause illness. If cider is contaminated with acid resistant organisms like *E. coli* 0157:H7, they can survive and cause foodborne illness. An outbreak of *Salmonella agona* infections linked to consumption of contaminated cereal occurred in 1998. This highlights the importance of preventing cross contamination.

Chapter 2: Management & Personnel

2-101.11 Assignment

In a large facility with multiple different retail food operations, can there be a single person in charge or should there be a different person-in-charge (PIC) for every department?

The FOOD CODE only requires that "a" person-in-charge per licensed entity be present in the establishment during all hours of operation. Each firm must determine how to accomplish adequate oversight of operations. Facilities that are chronically out of compliance with FOOD CODE requirements may need to reevaluate their supervisory structure and training programs.

If an operation has many satellite sites, does each site need a PIC?

Yes, each satellite location requires a person-in-charge (PIC). It is important not to confuse the requirement for a license with the requirements under the FOOD CODE. A satellite location may be exempt from licensing under the Food Law of 2000, but still fall under the food-safety requirements of the FOOD CODE.

2-102.11 Demonstration of Knowledge

How will regulators determine if the person-in-charge demonstrates knowledge? What is the role of the regulator in industry education?

Section 2-102.11 states the person-in-charge shall demonstrate knowledge by:

1) compliance with the Code, OR
2) completing an approved manager certification training program, OR
3) being able to discuss the specific areas identified in Section 2-103.11 that are applicable to the scope of operations present in the facility.

Examples:

A person-in-charge in charge of a 24-hour convenience store that only prepares coffee and sells prepackaged refrigerated or frozen foods would need a basic knowledge of food safety principles including proper storage temperatures of prepackaged ready-to-eat foods, and cleaning and sanitizing.

A person-in-charge in charge of full service food operations involving cooking, cooling, hot and cold holding of potentially hazardous foods would require extensive food safety knowledge – the kind of information presented in the many manager certification programs that are currently available.

The best way that a person-in-charge can demonstrate the required level of knowledge is by the compliance with the FOOD CODE. Maintaining consistently safe food operations by obtaining training, establishing sound procedures, monitoring employees, and taking appropriate corrective actions are the true barometers of food safety knowledge.

How do you recommend that regulator's structure questions to assess person in charge knowledge?

The types of foods and the methods of preparation used in the facility should drive the inspection and communication process – including discussion with the person in charge. Regulators should avoid hypothetical questions or questions about food safety facts that do not relate to the facility's food operations. Open-ended questions that give the person in charge the opportunity to share relevant information about their food operations are generally preferable over closed-ended questions. Targeted questioning in a relaxed atmosphere can be an extremely effective information-gathering tool. Inappropriate formal quizzing of the person in charge can quickly create an uncooperative environment and should be avoided during routine inspections.

If the PIC is certified and is knowledgeable on the FOOD CODE requirements, but we still observe critical food safety issues in the operation - what is an appropriate action for the regulatory agency?

The § 2-102.11 demonstration of knowledge requirement has been met and should not be debited. Violations of other requirements of the law should be documented as appropriate (*see* Interpretative Memorandum "Uniform Citation of Violations.") Manager knowledge level should not change how the inspector documents other violations.

Food Code Q & A

The FOOD CODE requires both manager knowledge and specific actions that ensure the safety of foods. When manager knowledge does not translate into appropriate behavior, further training may not result in compliance. Regulators may take these factors into consideration when deciding which regulatory actions are needed to achieve long-term compliance in a facility.

What if the PIC is certified under a manager knowledge program, but cannot properly answer questions on requirements of the FOOD CODE?

Generally, if the PIC has successfully completed an approved manager certification program, they have met the manager knowledge requirement of § 2-102.11. The PIC's responses to inspector questions should be interpreted in light of the facility's level of compliance with other FOOD CODE requirements (see § 2-103.11). It would be inappropriate for an inspector to use a generic list of questions to quiz the PIC. It is appropriate to question managers regarding violations that are observed.

A retail grocery store has a bakery department that starts production at 3 a.m. Would they be required to have a trained/knowledgeable food safety person present if these products are not potentially hazardous foods?

The knowledge level required of the PIC depends on the scope of the operations present while they are in charge. The PIC at 3 a.m. would need to understand issues relative to the bakery (examples: employee health and hygiene, cleaning and sanitizing). The person in charge when the full service deli begins operations would need more extensive knowledge since the scope of operations could now include cooking, cooling, hot and cold holding of potentially hazardous foods.

We have several facilities where there is a significant language barrier. Is it the owner's responsibility or the regulator's responsibility to provide interpreters to verify demonstration of knowledge and discussion of food preparation?

Assessing the level of compliance with the FOOD CODE is the best method of assessing manager knowledge. Observation of actual practices does not require an interpreter. That said, we don't want to minimize the importance of effective two-way communication during the inspection process. Language barriers have been and will continue to be a significant obstacle that we must work together to overcome. Adoption of the FOOD CODE does not change that need. Section 8-304.10 (B) Indicates that it is ultimately the responsibility of the licensee to comply with the Code. The Department is working with LHDs to identify food safety materials in languages other than English to help make the regulatory process more effective. However, translations into every possible language are not feasible and the ultimate responsibility of Code compliance rests with the operator.

Can the PIC refer to a book to give answers to questions to demonstrate knowledge or refer to other written items?

The intent of this requirement is that managers have a practical "working" knowledge of food safety requirements relevant to the food operations present in their facility. Information that would be reasonably expected to be used by the PIC as they do their work (posters, placards, standard operating procedures, and checklists) could be referred to.

On inspection, the first question many sanitarians are asking restaurant operators is whether or not they have food safety certification. This seems to send an incorrect message that certification is mandatory. Would you please comment?

Manager certification is not mandatory under state law, therefore, in jurisdictions without a local requirement, it is important that a sanitarian not pose this question as though it is a requirement. Nevertheless, information about manager training can be useful to the sanitarian to direct their communication and educational efforts. Thus, food establishment operators should expect this question will be asked.

Food Code Q & A

2-103.11 Person in Charge

How will the LHD determine that the PIC is routinely meeting Section 2-103.11?

By using the same investigative skills that were used before FOOD CODE adoption. Most of the PIC responsibilities explicitly required by the FOOD CODE were implied by earlier laws & regulations (even the GMPs). The Code also incorporates Hazard Analysis Critical Control Points (HACCP) principles. Use of these principles during inspections will help regulators focus on food safety and how foods are handled as they move through the facility. Knowledge and record keeping requirements contained in the FOOD CODE and the Food Law will help regulators to assess facility practices during all hours of operation and to go beyond "snap shot" inspections that only document conditions present in the facility at the time of inspection.

Are there any provisions for excluding drunk and intoxicated persons from serving, selling, and preparing food (seen at some temp food events)?

No. Regulators should focus on the food employee's behavior as it relates to meeting FOOD CODE requirements.

2-201.11 Responsibility of the Person in Charge to Require Reporting by Food Employees and Applicants

What is the operator's responsibility regarding employee health?

The intent of this section is that the PIC understand the cause and prevention of foodborne illnesses and that each facility have a management system in place that:

1. takes reasonable actions to avoid hiring persons with infections that are easily transmitted by food (see Annex 7, Form 1, Applicant and Food Employee Interview),
2. informs employees of the employee's responsibilities to report health conditions that could transmitted by food (see Annex 7, Form 2, Food Employee Reporting Agreement), and
3. takes action to restrict or exclude persons with conditions likely to be transmitted by food (see Annex 7, Form 3, Applicant and Food Employee Medical Referral).

Food managers should be able to demonstrate to inspectors the actions they are taking to meet these requirements.

What is the inspector's responsibility with regard to "restricted employees?" Inspection of all forms and employment applications? Ask every employee how he or she is feeling?

Inspectors should verify that facilities are taking action to implement procedures that comply with these requirements. During routine inspections, the emphasis should be on verifying that an effective system of managing employee health is being developed and implemented – not on evaluating the health status of individual food workers. If an inspector becomes aware that an ill employee is working, that information indicates the present system should be assessed and managers should be directed to take appropriate action to revise the system and promptly comply with the FOOD CODE requirements.

During outbreak investigations, inspectors must determine both the health status of the individuals who prepared the implicated foods, and if facility management took required actions to prevent ill employees from contaminating foods.

Is there any record keeping requirements regarding these new reporting requirements? If so, what records do operators have to make available to the inspectors upon visits?

The FOOD CODE does not specifically identify any record keeping requirements. Operators should understand that they can use written documentation to indicate how management has complied with FOOD CODE requirements; make sharing information with regulators easier; and demonstrate due diligence if a foodborne illness outbreak occurs.

Food Code Q & A

Does the FOOD CODE reporting requirement conflict with state or federal confidentiality requirements?

The FOOD CODE has received close review for compatibility with other laws. The reporting requirements are limited to *Salmonella typhi*, *Shigella* spp., *E. coli* 0157:H7, and Hepatitis A, which are among the conditions that Michigan law already required laboratories and physicians to report to communicable disease staff of local health departments. These four diseases are highly infective and virulent. The reporting requirement is based on the severe medical consequences to individual infected with these organisms; i.e., hospitalization and even death. The additional reporting requirements contained in the FOOD CODE are justified given the need for timely action to protect the public from potential transmission of these illnesses.

The FOOD CODE reporting requirements do not negate other requirements to safeguard the confidentiality of personal medical information. The person in charge should be aware of the confidentiality requirements of the Americans with Disabilities Act (ADA). For information about the ADA, call 800-669-EEOC.

Do you have any suggestions as to how managers/owners should communicate with employees and applicants concerning their health?

The FOOD CODE identifies the reporting requirements but does not mandate how managers are to communicate these requirements to employees. The Code does contain several useful tools to help both regulators and food facility managers. Annex 3, Public Health Reasons/Administrative Guidelines, contains an excellent detailed discussion of the reasoning behind the employee health requirements. Annex 7, Model Forms, Guides, and Other Aids, contains three forms that operators can use or modify to better suit their purposes: Form 1, Applicant and Food Employee Interview; Form 2, Food Employee Agreement; Form 3, Applicant and Food Employee Medical Referral.

How will the PIC know if the "conditional employee" or present employee is truthful about his/her health history? Is it realistic to expect people who are sick and need a job to be truthful? Will medical records be required?

Review of medical records is not required to meet these requirements. The purpose of laws is to establish clear standards and responsibilities. The FOOD CODE identifies that food employees and managers have a shared responsibility for preventing foodborne illness and are both legally obligated to report conditions likely to be transmitted by food.

The FOOD CODE requirements are not intended to make people more honest. They can, however, begin the process of establishing greater accountability.

Will Michigan ever require food handlers to have a "food workers permit" prior to employment in a food service establishment or retail facility?

The FOOD CODE applies a strategy that emphasizes required reporting, effective handwashing, minimizing bare-hand contact with ready-to-eat foods, effective supervision, and education of food workers. This strategy is thought more effective and efficient than routine testing of food workers for various infectious agents because laboratory testing is expensive; accurate tests for many foodborne agents are not available (especially for viruses); and infections are dynamic – a negative test from last month does not mean the food worker is negative today.

Paragraph (C) applies to establishments that serve a HIGHLY SUSCEPTIBLE POPULATION. Wouldn't most highly susceptible populations (under the definition here) be excluded from licensure by local health departments (day care facilities, hospitals, and nursing homes)?

Many, but not all, of these facilities, are exempt from the Food Law of 2000 because they are regulated under other laws. However, the FOOD CODE is a model code that other agencies may review and adopt as they determine appropriate.

<u>2-201.12 Exclusion and Restriction</u>

The definitions of exclusion and restriction were omitted from the code. Why?

Food Code Q & A

Terms with plain meaning are not defined in the FOOD CODE.
Exclusion: "Exclusion "means," to keep from entering" (Webster's New World Dictionary, 3rd edition).
Restriction: "Restriction" means to prevent a food worker from working with exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles (*See* § 2-201.12(B)).
An extensive discussion of the public health reasons for this section is contained in FOOD CODE Annex 3.

According to the definition of exclusion, an employee is not really excluded from the food establishment. Why? Doesn't this contradict pp. 182-183 of the Code?

"Exclusion" does means the employee is excluded; thus there is no contradiction. See the answer above.

Do employees with other communicable diseases such as Giardia, Impetigo, TB, have to be excluded from food prep?

We need to make a clear distinction between individuals who are experiencing symptoms of acute gastroenteritis or have a pustular lesion (draining boil or infected wound), and those infected with a microorganism but having no symptoms of illness (asymptomatic carriers). Chapter 2 contains detailed guidance on excluding or restricting persons experiencing the symptoms. Only four microorganisms are identified that would require exclusion regardless of whether the food worker had symptoms or not (the "Big Four" - *Salmonella typhi*, *Shigella* spp., *E. coli* O157:H7 and Hepatitis A virus). In all other cases the appropriate action will depend on whether the individual is experiencing symptoms or not.

Section 2-201.12 of Annex 3, Public Health Reasons/Administrative Guidelines, contains a detailed discussion of this topic. Included are lists of agents that the Centers for Disease Control and Prevention's indicates are often transmitted by food contaminated by infected employees, and occasionally transmitted by food contaminated by infected employees.

2-201.13 Removal of Exclusions and Restrictions

It is estimated that 75-80% of the employees working in the food service industry are not full time employees and, therefore, do not receive any benefits such as health insurance. In the absence of such, who is going to pay for physician-lab cost for tests required of the employee before employee restriction or exclusion is removed?

The decision of who pays for the testing costs is left to the employer and employee. Food workers with medical conditions or symptoms that could be readily transmitted by food do not have a legal right to work with food. The FOOD CODE legally obligates the PIC to exclude or restrict food workers with certain medical conditions or symptoms of illness.

The Americans with Disability Act (ADA) of 1990, obligates employers to make reasonable efforts to accommodate these individuals by identifying alternative work responsibilities where feasible. Accommodation would not be required if it: compromises the intent of the restriction or exclusion, or imposes an undue hardship on the operation. For a comprehensive understanding of the ADA, consult the references listed in the References Annex of the FOOD CODE or contact the U.S. Equal Employment Opportunity Commission at 1-800-669-EEOC.

2-201.14 Responsibility of a Food Employee to Report

The employee is not necessarily familiar with foodborne illness symptoms. Is it not the PIC's responsibility to recognize the illness in the employee?

The FOOD CODE makes it clear that both the food employee and the manager share responsibility for preventing foodborne illness. The person in charge must inform employees of the reporting requirement, recognize symptoms, and prevent employees with medical conditions that could be transmitted with food from working with food. It is not the responsibility of the person in charge to make a diagnosis. An effective way that employers can inform food workers of the symptoms of foodborne illness is by using a form similar to Form 2 in Annex 7.

Food Code Q & A

Can a booklet be developed to give to employees? They need to know what their responsibilities are relating to employee health. Also, this info needs to be given to all Human Resources executives, and should be included in all employee handbooks.

The FOOD CODE contains examples of forms that can be used to share the information with employees.

If an employee fails to communicate to you that they had any of the "Big Four" illnesses, what are the legal ramifications for that employee?

Employees may be reminded that violations of the FOOD CODE may be punished as provided in Chapter V the Michigan Food Law of 2000. The total implications would depend on the facts of the particular situation, including the consequences of their failure to report. If the employee's actions resulted in a foodborne illness outbreak, the employee would also be legally liable for civil lawsuits.

2-301.12 Cleaning Procedure

Handwashing is required for 20 seconds, but metered faucets only have to be activated for 15 seconds. What guidance should inspectors give to operators?

The intent is to ensure clean hands not to measure handwashing time with a stopwatch. Heavily soiled hands will require more time to adequately cleanse than ones that are lightly soiled will. The faucet can be activated a second time. A 15-second cycle used to lather hands, then a 15-second cycle for rinse.

2-301.14, When to Wash

What about handwashing facilities for remote waitress stations?

The need for additional hand washing facilities near remote waitress stations will be prescribed by the activities conducted at the location.

2-301.16, Hand Sanitizers

Will MDA provide a list of approved hand sanitizers or the FDA/USDA list referenced in this section?

All products listed in the USDA *List of Proprietary Substances and Nonfood Compounds*, including hand-sanitizers, are now listed in the NSF "White Book," which may be referenced on the NSF website at www.nsf.org/usda. More than 120,000 products are listed. These include anti-foaming agents, marking agents, fruit and vegetable washing products, preflushing agents, denaturants, cleaning chemicals, sanitizers, hand care products, pesticides, lubricants, water treatment compounds, and other related products. For more information, contact NSF International at 888-NSF-FOOD, or by e-mail at nonfood@nsf.org.

2-302.11 Maintenance (fingernails)

May food employees working with exposed foods wear fingernail polish or artificial fingernails?

Yes, but only if they wear intact gloves in good repair.

Are wait staff prohibited from wearing acrylic nails?

The standard is FOOD CODE § 2-302.11(B), which states, "Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial nails when working with exposed food." This standard contains two criteria to trigger the requirement and one exception:

- ✓ Is the person is a "food employee?" and
- ✓ Is the person "working with exposed food?" but
- ✓ Does the person fall under the exception for glove use?

Is the person a "food employee?" Job activities, rather than job titles, determine who is "food employee," but wait staff generally will be considered food employees under the FOOD CODE (since they handle dishes and utensils).

Is the person "working with exposed food?" "Working with exposed food," means more than just delivering plates of food and glasses of beverages to customers. Example: wait staff who enter the kitchen and assemble salads would be considered working with exposed food.

Does the person fall under the exception for glove use? A food employee while wearing intact gloves in good repair is exempt from the prohibition against artificial nails.

2-303.11 Prohibition of Jewelry

How many women wear only a plain wedding band without an engagement ring? Are they expected to remove this ring?

Yes. Items of jewelry, such as a diamond ring, may collect soil and the construction hinders routine cleaning. As a result, the ring may act as a reservoir of pathogenic organism transmittable through food. An additional hazard associated with such jewelry is the possibility that pieces may fall into the food. Hard foreign objects in food may cause medical problems for consumers, such as chipped teeth and internal cuts and lesions.

Section 2-401.11, Eating, Drinking, or Using Tobacco

Define and make a policy for closed beverage containers. There's a contradiction with the requirement that areas designated for eating, drinking and tobacco use shall be located to protect food, utensils, and equipment from contamination.

Closed beverage containers are an exception to the designated area requirement for employee drinking, as specified in § 2-401.11(B). A capped cup of water with a straw is an example of a permitted closed beverage container.

2-401.12, Discharges from the Eyes, Nose, and Mouth

What if an employee's persistent sneezing, coughing or runny nose are due to allergies?

The cause of the persistent discharge does not matter for at least two reasons. Consumers expect that their foods be protected from contamination by body secretions, and discharges are reasonably likely to directly contaminate foods or food contact surfaces with disease causing organisms that are frequently found in the mouth and nose (for example, Staphylococcus aureus).

The FOOD CODE specifies diseases that are transmissible through food. How should we handle complaints regarding store employees with diseases such as pink eye?

This section requires restriction of food employees with persistent discharges, which would include pink eye, from working with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

2-402.11 Effectiveness (Hair Restraints)

At what length does hair have to be restrained?

For employees engaged in food preparation, all hair needs to be restrained. Hairnets, caps, hats, and other hair coverings are acceptable if used correctly.

Are wait staff and cashiers non-food employees?

Job activities, rather than job titles, determine who falls under the definition of "food employee" in the FOOD CODE. "'Food Employee' means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces." FOOD CODE § 1-201.10(30).

Thus, cashiers with no other assignments are not "food employees" and do not fall under the requirements for food employees. Wait staff generally meet the definition of a food employee (since they handle dishes and utensils), therefore, they must meet the requirements specified in the FOOD CODE. A wait staff with Hepatitis A virus would, therefore, fall under the exclusion requirement for food employees.

Are wait staff required to wear hair restraints?

Wait staff are exempt from the hair restraint requirement "if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles." FOOD CODE § 2-402.11(B).

In most situations, wait staff will not be required to wear hair restraints. However, "minimal risk" will be determined based upon assessment of the whole situation.
No answer can anticipate all possible circumstances, but factors to consider in determining whether the lack of hair restraints presents more than minimal risk in a particular setting include the following:

(i) *Amount of food exposure* – how much time the wait person spends working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(ii) *Activities conducted by the staff* – for example, whether the wait staff is engaged in any food processing or handling, and the scope of that activity, such as whether there is any manual contact of food or food-contact surfaces.

(iii) *Assessment in light of the twin goals of the requirement* – the purpose of the requirement is twofold: to prevent both direct and indirect contamination. A restraint keeps dislodged hair from ending up in food. However, food employees may contaminate their hands when they touch hair, and the hair restraint may deter employees from touching their hair.

The overall assessment needs to consider both whether the establishment's practices effectively minimize contamination of hands; and whether there is minimal risk of hair getting into the food. For example, it may be acceptable for a wait staff to remove the hair restraint while serving, but wash hands and put on a hair restraint while making a batch of cole slaw. Finally, bear in mind that the requirement for hair restraints is *not* a critical item. This requirement needs to be kept in perspective of the overall goal of the inspection.

Chapter 3: Food

Please provide procedures for taking food temperatures of different foods- pan of pork sausage that is cooked- do you check on top? Bottom? One of each? Hot soup- do you stir soup to mix before taking temp?

Annex 4, Food Establishment Inspection, contains an extensive discussion on temperature measuring devices and their appropriate uses. Some key points:

1. Regulators should document temperatures that reflect typical conditions within the food facility. If food workers normally stir a product at regular intervals, then taking a product temperature after stirring is appropriate. If the regulator has reason to suspect that non-uniform temperatures exist (example: poor functioning steam table) or an operator is incorrectly using a hot holding device for rapid re-heating, then taking several product temperatures without stirring at the hottest and coldest locations is in order. In general, the temperature monitoring should reflect actual conditions and the risk that exists on-site.
2. Sanitize thermometer between uses so as not to contaminate foods.
3. Bimetallic thermometer can not accurately measure temperatures of thin foods because the temperature sensing coil runs from the tip up 3 inches and only gives an average temperature over that length. Thermistor style thermometers can be used for thin foods (hamburgers, chicken pieces, chops, eggs, fish, etc.) and inexpensive models can require about 10 seconds to register the temperature. A resistor in the tip of the probe measures temperatures. The probe is approximately 1/8th of an inch thick. Thermocouple thermometers can be used to monitor thin foods and reach and display the final temperature the fastest – within 2 to 5 seconds. A thermocouple measures temperatures at the junction of two fine wires located in the tip of the probe.

Other related sections of the FOOD CODE:

1. 4-302.12 Food Temperature Measuring Devices
2. 4-502.11 Good Repair and Calibration

Food Code Q & A

Excellent information is available on the web. On the FSIS Website:
"Thermometers and Temperature Indicators", Fact Sheet with Graphics Updated: April 11, 2000. Click on the thumbnail to http://www.fsis.usda.gov/oa/pubs/image_library/thermoms.htm
"Kitchen Thermometers" Twelve-page booklet that discusses appropriate uses and limitations of various temperature measuring devices. Emphasizes use of kitchen thermometers as a critical factor in controlling foodborne pathogens. (Revised April 2000). Entire document can be downloaded from http://www.fsis.usda.gov/oa/pubs/thermy/kitchen.pdf

3-201.11, Compliance with the Food Law

Will grocery stores processing fresh, unpasteurized juices be required to label their containers as such?

Yes. This labeling requirement is contained in 21 CFR section 101.17(g)

3-301.11, Preventing Contamination from Hands

How will the prohibition for bare-hand contact with ready-to-eat foods be met?

Food employees will use suitable utensils, such as tongs and spatulas, deli tissue, and single-use gloves. When the prohibition on bare-hand contact is not practical, the Food Law establishes alternative procedures when bare-hand contact may be allowed (Michigan Food Law of 2000, Section 6151). The establishment must:

1. determine that no bare-hand contact is impractical in their facility,
2. meet the critical requirements of the FOOD CODE,
3. implement and document a training program for food employees having bare-hand contact with ready-to-eat foods, and
4. develop and implement a written plan documenting how the facility manages employees having bare-hand contact with ready-to-eat foods.

Give examples of the critical and non-critical issues related to bare-hand contact with foods that are not in a ready-to-eat form paragraph (C) of 3-301.11 (Swing item).

Critical violation

An employee with poor handwashing practices is processing raw cabbage which will later be processed into cole slaw. Subsequent processing does not include a kill step, like cooking, that would eliminate pathogenic organisms introduced by the employee's hands.

Noncritical violation

An employee uses bare hands to scoop flour out of a bin for subsequent baking. A plastic scoop is available and should have been used but further processing would eliminate any disease causing organisms introduced by the bare-hand contact.

3-302.11 Packaged and Unpackaged Food – Separation, Packaging and Segregation

Are uncut and unwashed vegetables considered ready-to-eat? If not, does that mean raw meat stored above them is not a violation?

Paragraph (A) of this section states that "Food shall be protected from cross contamination". Inappropriate storage is still a violation - potential cross contamination. Raw fruits and vegetables should still be protected from contamination from raw meats during storage. Subparagraph (A)(4) requires packaging, covering or wrapping food to prevent cross contamination.

Note: Section 3-302.11(B) exempts whole, uncut raw fruit, vegetables and nuts that nature already protected with a shell, peel or hull.

Paragraph (A)(2) Talks about separating various raw meats and poultry. Since beef, fish, lamb and pork are cooked to the same temperature, must we still use separate prep. utensils?

The intent of this section is to prevent cross contamination from meat types with different cooking temperature requirements. It does not create the requirement for separate prep surfaces and utensils for each type of meat. Facilities and food workers can consistently prevent cross contamination via a number of ways including adequately cleaning and sanitizing utensils and food contact surfaces and/or use of separate equipment. (*See* related answer under § 4-602.11.)

3-304.13 Linens and Napkins, Use Limitation

What about linens for bar drawers?

Storage facilities for utensils and equipment should be smooth, non-absorbent, and easily cleanable. Linen and towels retain/absorb moisture and soil and, therefore, are not suitable.

3-304.14 Wiping Cloths, Use Limitations

How strict will we be with separation of wiping cloths?

Cloths used to wipe food spills shall be kept separate from other cloths; e.g., those used with raw foods. Food spills from tableware or carryout containers may be wiped only with dry, clean cloths; while other spills, e.g., from food contact and non-food contact surfaces, can be wiped only with wet sanitized cloths.

3-401.11 Raw Animal Foods

How does an inspector verify calibration of the humidity-measuring device to verify safe humidity levels (in high humidity ovens) are being maintained?

This verification should not be necessary during routine inspections if the units are operated in accordance with manufacturer's instructions. If there is evidence suggesting a problem e.g. inadequately cooked foods, the manufacturer should be required to submit calibration information.

3-402.11 Parasite Destruction

I don't feel that skilled at fish analysis. Will labels be required on fish deliveries stating the species?

Labeling of the common or usual name of the fish is already required by state and federal law. (These names are listed in § 3-402.11 in addition to the scientific names.)

Only Yellowfin, Bigeye, Northern or Southern Bluefin Tuna may be served raw without freezing. Are they referring to only Tunas? Salmon is great a little undercooked and what about sushi?

The species listed in the FOOD CODE in § 3-402.11(B) are not considered susceptible to the parasites of public health concern and are exempt from the freezing requirement (See Annex 3). All other fish, including salmon, need to meet the requirements in § 3-402.11(A).

Does a consumer advisory allow an establishment to serve raw or undercooked fish without freezing for parasite destruction?

No. Freezing cannot be waived through the consumer advisory. All fish that is served raw or undercooked must be frozen (except for the species exempted in § 3-402.11(B)).

In addition, all raw and undercooked fish must have a consumer advisory. This includes both fish that have been properly frozen and the parasite-exempt species. So, for example, an operator can not serve undercooked salmon unless the fish has been properly frozen and a consumer advisory has been provided.

3-402.12 Records, Creation, and Retention

Food service establishments typically do not freeze these fish. What do we look for by way of documentation?

Suppliers of fish intended to be served without further cooking (examples: sushi, sashimi) generally provide a statement certifying the temperature and duration of freezing used to control parasites.

3-403.10 Preparation for Immediate Service

Is there a reasonable holding time here? E.g., how long can a pizza sit on a counter waiting to be picked up? Should we ask to see order slips? Some restaurants regularly make up large amounts of food for lunch hour and state the food will be gone quickly.

Section 3-403.10 is not the appropriate rule to apply in the examples provided. Section 3-403.10 applies to foods that are previously cooked and refrigerated food that is prepared for immediate service in response to an individual order, such as a roast beef sandwich au jus.

Refer to § 3-501.19 for the standard on using time as a public health control.

3-403.11 Reheating for Hot Holding

Paragraph (E) contradicts an earlier interpretive memorandum stating that beef roasts had to be sliced up after the initial cook phase. It also implies a contradiction of usual safe cooling practice of subdividing large masses of food before cooling.

Safe cooling practices, § 3.501.14, still apply, and larger roasts may have to be cut down to meet the requirement.

How many times can a product be reheated during the holding period?

Strict reading of § 3-403.11 leads one to surmise that this section does not promote reheating a previously reheated product. However, there is no prohibition of multiple reheating.

3-5: Limitation of Growth of Organisms of Public Health Concern

Must regulatory personnel use pH meters?

Regulators may occasionally need to confirm the pH of certain foods. If pH is one of parameters used by industry, operators may also be asked to demonstrate compliance with GMPs by using their own pH meter. (Also, see previous answer.)

3-501.11 Frozen Food

How long can product be kept frozen?

The FOOD CODE does not set specific requirements. Storage time is largely a quality-control matter, rather than a food safety issue, and depends on multiple factors including product characteristics (water, fat content), and holding temperature.

3-501.13 Thawing

Does paragraph (D) mean that a cook could thaw on the counter potentially hazardous foods prepared for an individual order (example: the coordinator of a dinner party calls in and orders food for that night)?

This section applies only to foods that meet two requirements:

1. prepared for immediate service, and
2. in response to an individual consumer's order.

Foods prepared in advance of a meal that does not result in immediate service do not meet these requirements.

3-501.14 Cooling

What is the rationale behind allowing 6 hours to cool cooked foods to 41°F?

Scientific studies indicate that food safety is not compromised by allowing a two-step, six-hour cooling period provided certain conditions are met:

1. An adequate cooking step is used that destroys all foodborne pathogens except the spore formers.
2. No recontamination of the cooked food after the kill step.
3. Quick movement through the portion of the danger zone supporting growth for mesophiles. Slower growing psychrophiles (Listeria & Yersinia) are not able to generate enough growth in the remaining 4 hours.

Food Code Q & A

The FOOD CODE allows 6 hours for potentially hazardous (PHF) cooked food to cool. Why are we going backwards? We used to require PHF to be cooled in 4 hours.

1) Improper cooling of potentially hazardous food (PHF) continues to be a leading cause of foodborne illness. However, the risk of rapid growth of pathogens is not constant over the entire "danger zone" from 41-140°F. Between 70-120°F is the ideal range for rapid growth. The FOOD CODE is actually more stringent than the previous 4-hour requirement because it clearly mandates the use of quick-chill methods to rapidly bring PHF through the 70-120°F danger zone.

2) Although growth may occur between 41-70°F, this range is not as critical, since most pathogens grow slower in those temperatures. Therefore, it is not unreasonable to allow food to cool for 4 hours between 41-70°F.

3) Note that the FOOD CODE requires a two-tiered cooling method. This is *not* the same as a 6-hour cooling period. If a PHF does not reach 70°F in 2 hours, it violates the code.

4) Although the 1976 food service code contains a requirement for cooling PHF in 4 hours, there is no similar requirement for cooling of PHF for grocery stores and other MDA-inspected facilities. The FOOD CODE offers a major improvement over the previous Regulation 553.

Note: PHF prepared from ingredients at ambient temperature must be cooled within 4 hours.

<u>3-501.16 Potentially Hazardous Food, Hot and Cold Holding</u>

Must cold holding equipment that is incapable of maintaining product temperatures at 41°F must be replaced or brought up to code by May 8, 2006?

Yes. See Michigan Food Law of 2000 Section 1117 (3) and FOOD CODE § 3-501.1(c)(2). Cold holding equipment that must meet the 41^0 F when the Food Law takes effect on November 8, 2000 include:

1. equipment installed after the Food Law was signed into law (May 8, 2000), or
2. equipment capable of maintaining 41 degrees F with normally expected maintenance and proper food storage practices

Equipment that doesn't meet the above criteria must meet the 41^0 F requirement no later than May 8, 2006. However, operator must determine if the equipment is capable immediately.

In the case of mobile food service establishments, after May 8, 2006, will the refrigeration units on those vehicles be required to hold potentially hazardous food at 41°F?

Yes. The cold holding temperature requirements apply to all licensed retail food establishments.

Do pooled raw eggs have to be held in an ice bath or under refrigeration before cooking?

The FOOD CODE specifies the temperature (generally 41^oF) and not the exact method of cold holding. The Code does require different cooking temperatures for pooled vs. unpooled eggs [see 3-401.11 (A)(1) and (A)(2)]:

- Unpooled: 145 ^{o} F for 15 seconds
- Pooled eggs: 155 ^{o} F for 15 seconds

Requirements for egg use by facilities also differ. Requirements pertaining to eggs served to highly susceptible populations are contained in section 3-801.11(B) & (E).

<u>3-501.17 Ready-to-eat, Potentially Hazardous Food, Date Marking*</u>

Does the date marking requirement apply to gallons of milk?

So long as it's held for more than 24 hours, yes, once it's opened. Operators should consider adequate sizes of working containers of product that can be used within 24 hours if they find this requirement a burden.

If purchasing & using a prepared food, can you keep unopened product till the manufacturer's "use by" or "expiration date" or must product (unopened) be used within seven days?

Once a container is opened in a retail establishment for extended use, it must be marked and used within 4 days or 7 days depending on holding temperature. The manufacturer's date on the master container does not affect this requirement. It should be noted that end dates related to date marking are the discard/use by dates. Last dates of sale dates placed by the manufacturers are not an equivalent trigger and generally relate to quality, not public health significance.

Food Code Q & A

The provision for dual shelf life and temperature standards is likely to produce confusion and be difficult to enforce. How will inspectors be expected to address this issue?

The dual temperature standards for date marking is provided for food service establishments, and state and county fair concessions with pre-existing refrigeration equipment that cannot maintain foods at 41°F. The date marking requirements in all other retail facilities licensed by MDA would be based on only the 41°F holding temperature since these facilities have been required to hold potentially hazardous foods at 40°F or below since 1975.

Each facility is required to implement a consistent date labeling system based on the capability of the cold holding equipment that they are using. The inspector's role is to verify that the facility's date labeling system complies with FOOD CODE requirements. Facilities with multiple cold holding units of differing capabilities (some capable of holding foods under 41°F and some under 45°F) may chose to date mark foods according to the higher cold holding temperature in order to reduce the potential for employee errors.

Is date marking the same as last day of sale?

No, there are several key differences.

Target Audience:

1. Date marking is intended to be used by food workers to ensure proper product rotation
2. Last date of sale is intended to be used to inform consumers of the food manufacturers recommended shelf life

Products involved:

1. Date marking applies to opened working containers of ready-to-eat potentially hazardous foods that are held more than 24 hours
2. Last date of sale requirements apply to any packaged perishable foods (potentially hazardous or not) offered for sale. See section 8107 of the Food Law of 2000 for more information.

Are big blocks of cheese subject to date marking? Are all chubs of lunchmeat exempt from date marking or just "cased" lunchmeats?

Refer to FDA guidance or the fact sheet on date marking.

In terms of date marking, will a salad bar need to be marked with "consume by" notation?

Not typically, since most salad bars are replenished from a working stock container. The working stock containers of applicable foods would require date marking.

Is plastic wrapped deli lunchmeat included in seven-day use by the "after opened" rule?

Deli meat is generally exempt if the unsliced portions are kept with casings intact. This may include ham & water products without cellulose casings if the original plastic packaging is intact.

Need a clarification on "consume by" dates on PHF- date marking for working containers and bulk service containers in a grocery store deli. Should this be a "discard date"?

See §§ 3-501.17 and 3-501.18. The end date for date marking is the last date the product may be consumed. Otherwise, the product must be discarded at the end of the day.

3-501.17(E)(F) Ready-to-Eat, Potentially Hazardous Food, Date Marking

Clarify "meal portions served or repackaged from a bulk container upon consumer request"

This is a product going immediately and directly into consumer's hand. There is not a 24-hour hold period.

3-501.19 Time as a Public Health Control

Does the four-hour window mean that if food cools down to 135^0 F within 4 hours, it can still be eaten without being brought back up to 165^0 F?

Yes

What firms will be able to use time as a public health control? How does the department plan to implement this provision?

While the Code does not specify which types of firms may use this provision, it is clear that this provision can only be used under controlled conditions. Very specific written procedures, and close monitoring are required. Only facilities with excellent management and a strong record of compliance with food safety standards should consider use of this provision. Time as a public health control cannot be invoked as a shield for poor management practices that allow food to deviate from proper holding temperature. This provision can not be used in establishments serving highly susceptible populations (see above). In addition, limitation to food for service for immediate consumption" in most cases eliminates typical grocery store food sales.

What do you want in the written procedures?

Refer to the requirements in § 3-501.19.

3-502.11 Variance Requirement

Does acidifying vegetables in a retail setting require a variance?

In most cases, this will require a variance and a HACCP plan. A possible exception may be acidifying vegetables for refrigerated storage as working containers. Hermetic sealing and ambient storage would trigger the variance requirement and compliance with HACCP plans and 21 CFR part 114.

For reduced-oxygen packaging, do we need a HACCP plan plus at least 2 barriers? Can nitrite be used as a barrier?

A variance under 8-103.10 is only obtainable if the regulatory authority deems the issue to not represent a public health hazard. The operator has the responsibility of documenting this via HACCP plans, pH barriers, etc.

Do you envision food service establishments getting involved in any process that would require a variance for any reduced-oxygen packaging method?

Yes, it is possible a food service establishment may have a limited food processing operation.

3-502.12 Reduced Oxygen Packaging, Criteria

Why can't smoked seafood be vacuum packaged?

Smoked seafood can be vacuum packaged. However, spores of anaerobic pathogens such as Clostridium botulinum have the potential to germinate under vacuum packaged conditions. The FOOD CODE requires a variance and a HACCP plan to smoke and vacuum package fish.

3-602.11 Food Labels

Under what conditions might this section apply to restaurants?

Food packaged in advance of sale is required to meet the labeling requirements. An example would be prepackaged baked goods sold at the check out counter.

3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens

What is the regulator's legal responsibility for allowing sale of "raw dog" (raw hamburger) to be sold with a consumer advisory? Raw hamburger could reasonably be expected to contaminated. Are regulators "off the hook" just because a consumer advisory is given?

Food Code Q & A

Neither previous Michigan law nor the new food law prohibit the sale of raw or undercooked ready-to-eat meat products. The FOOD CODE does not take away the consumers right to choose to consume these products. It simply requires that these consumers be advised of the inherent risk. The requirement of a consumer advisory is a new safeguard intended to assist consumers to make informed decisions.

What languages must consumer advisories be in?

While the code doesn't specify, the minimum expectation is English.

Supposing the consumer orders chicken and the wait staff asks how it should be cooked (medium, medium rare, listing the various choices) – the consumer never intended to order undercooked food, but may end up doing so if these choices are not defined.

If the establishment serves undercooked chicken, it must meet the disclosure and reminder component of § 3-603.11 for consumer advisories.

Is there an intention to define the size and location of an adequate disclosure and reminder? For example, should the reminder be together with the disclosure and the menu item – if not, should their location be listed with the menu item?

Generally, the decisions are left up to the person in charge, who is responsible for ensuring the advisory is effective.

Might this rule allow the service of raw milk?

Act 233, PA of 1965, does not allow the sale of raw milk for immediate consumption. The Food Law 2000 does not contradict, but, in fact, cites Act 233, PA 1965.

Do consumer advisories have to be in the menu or can they be placed in lobby or other location?

The advisory may appear on placard, menu, table tent or by other effective written means.

Are consumer advisory labels required for prepackaged sushi items with raw fish?

The FOOD CODE does not specify that a label bear the required advisory as this would only be one of other effective means.

Does the freezing of the raw fish eliminate the need for a consumer advisory?

No, freezing, under specially described conditions, only destroys parasites and not bacteria that may be introduced to the surface of the raw fish during handling.

Does all sushi need to have a consumer advisory?

Only if the sushi is topped with raw fish. Sushi is sugar and vinegar flavored cooked rice. Some sushi does not contain raw fish.

If you use certified fish, are you still required to post the consumer advisory?

Yes, section 3-402.11 discusses special freezing for parasite destruction. Bacteria on the surface of raw fish is still a concern.

May the consumer advisory requirement be met with the undercooked menu items merely being noted with an asterisk calling attention to a brochure available upon request?

There are two components of the consumer advisory, disclosure and reminder, both of which must be met.

Disclosure. An asterisk, without more, is *not* sufficient to disclose that the food contains raw or undercooked animal food. Disclosure is satisfied by description of the item, such as "raw oysters," "raw-eggs," or "can be cooked to order."

Reminder. An asterisk linked to the note, "Regarding the safety of these items, written information is available upon request" will suffice as the reminder (assuming the brochure is appropriate). *See* Food Law of 2000 § 6149 and FOOD CODE § 3-603.1.

Chapter 4: Equipment, Utensils, and Linens

4-101.11 Characteristics

Is it better to leave a food in original container (like a #10 metal can), or to remove it to a food grade container for storage? Can you store food in the can?

The FOOD CODE does not allow the migration of metallic taste to foods, which may happen upon extended storage in metal cans. Therefore, it is preferable to store food in a working container if not used immediately.

Are cedar planks acceptable as a food contact surface for cooking & serving?

The FOOD CODE prohibits the use of wood as a food-contact surface except for the limited uses specified in § 4-10.19. .

4-101.15 Galvanized Metal, Use Limitation*

What is the pH of 'acidic food'? Below 6?

Anything below 7.

4-101.19 Wood, Use Limitation

May hard woods be used for cutting boards?

Yes. Of course, the surface must be properly maintained, and the use must comply with other any other applicable requirements.

4-202.11 Food-Contact Surfaces

Can empty containers of cottage cheese, pickle barrels, or other like containers be re-used (after wash-rinse-sanitize) to hold different food?

According to the definition of "single use articles," § 1-201.10(81), these items cannot be reused unless they are constructed to the standards of multi-use containers; i.e., §§ 4-101.11, 4-201.11, and 4-202.11.

Is this section any different than item #14 on the 1976-inspection form?

Not essentially. The former code referenced smooth, non-absorbent, easily cleanable, and corrosion resistance in the "use environment". Regulators will still look for these parameters to gauge compliance with § 4-201.11.

4-203.11 Temperature Measuring Devices, Food

What is an "approved" thermometer?

Temperature measuring devices shall be appropriate for their intended use, easily readable, accurate, properly installed, maintained and used. See FOOD CODE Annex 4 – 8. Temperature Measuring Devices.

4-301.12 Manual Warewashing, Sink Compartment Requirements

Under paragraph D, is a two-compartment sink appropriate for utensil washing with new construction (the terms 'continuous', 'intermittent' and 'ongoing' are not very clear)?

The intended use of a multiple compartment is a key consideration. Use of a 2-compartment sink must be approved before use. Two-compartment sinks are only for batch operations and then severely limited.

4-402.12 Fixed Equipment, Elevation or Sealing

Does this apply to "rounders" and other equipment not easily movable in a bakery?

Yes, no change here.

(B) Is this indicating if the area to be cleaned is only 6 inches deep, then 4-inch legs are acceptable?

If all areas under equipment can be reached for cleaning within 6 inches of the edge, only 4-inch legs are needed.

4-501.114 Manual and Mechanical Warewashing Equipment, Chemical Sanitization, etc.

I heard that when using chlorine properly, it should not rust or pit stainless steel. If used improperly (too strong), and left to sit, it will pit and rust stainless steel, no matter what the grade of the stainless steel.

That's correct. There are 20-25 types of stainless steel. Some contain more carbon and are more susceptible to corrosion. Remember, stainless steel is stain-less, not stain-proof.

4-601.11 Equipment, Food-Contact Surfaces, Nonfood Contact Surfaces, and Utensils

Is this section any different than item #22 on the 1976-inspection form? If not, does MDA really want this to be a critical item?

Failure to clean food-contact surfaces (equipment) is an identified factor contributing to foodborne disease. The 1999 FOOD CODE contains more critical items than 1976 Food Service Sanitation Ordinance.

4-602.12 Cooking and Baking Equipment

How many bakeries clean their baking pans every 24 hours?

Dry cleaning of non-PHF food surfaces using brushing/scraping is allowed under § 4-603.11.

4-603.17(B)(5)(b) Returnables, Cleaning for Refilling

What about all the self-service refills of soda with a single-service cup?

This section addresses returnable containers such as glass root beer jugs, not single-use beverage cups.

4-904.13 Preset Tableware

Preset tableware. What is inverted?

Anything not wrapped or covered. Glasses/flatware that contact foods and lip surface should be protected from contamination.

Chapter 5: Water, Plumbing, and Waste

5-101.12 System Flushing and Disinfection

What is the maximum temperature at a hand sink? Is there a maximum?

No maximum is stated. Water at a temperature of at least 43°C (110°F) must be provided through a mixing valve or combination faucet.

5-202.13 Backflow Prevention, Air Gap*

Any change on requiring air gaps on food prep and warewashing sink drain lines?

One change: a warewashing sink may have a direct connection.

5-202.14 Backflow Prevention Device, Design Standard

Is ASSE the only standard for backflow devices? What about ASTM?

Principally ASTM[1] standards are for pressure vessels (e.g., boilers). ASSE[2] principally are for backflow devices. CSA[3] and AWWA[4] also have standards for a few types of backflow prevention devices.

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[1] American Society for Testing and Materials.

5-204.11 Handwashing Facilities

Indicates hand sinks are to be convenient for use in food prep, food dispensing and warewashing areas. What is a food dispensing area?

Where exposed food is served. An example may be a drive through window where the employee also performs food-dispensing activities used to expedite customer orders.

5-205.11 Using a Handwashing Facility

Are handwash sinks designed for handwashing only; i.e., no other use such as filling water pitchers, cooking equipment?

Yes, handwash sinks must be dedicated to handwashing. *See* 5-205.11(B).

5-205.15 System Maintained in Good Repair

Please indicate critical and non-critical circumstances?

Inspector judgement is required. It would be critical if a sewer were leaking onto food storage. It would be non-critical for a sink faucet to drip onto the floor.

5-501.17 Toilet Room Receptacle, Covered

Need a clarification for covered receptacles in restrooms.

This is a specific description of containers with lids for soiled sanitary napkins in female toilet facilities (in toilet stalls or foot-pedal receptacles with lids).

Chapter 6: Physical Facilities

6-201-13 Floor and Wall Junctures, and Enclosed or Sealed

Floor drains in coolers – allowed or not?

Floor drains are allowed if air gapped or protected with an air break plus a back water valve.

6-202.14 Toilet Rooms, Enclosed

What about a roller-skating or ice skating rink?

This requirement only applies if a toilet room opens directly into a food establishment (where likely to impact food activities).

6-202.15, Outer Openings, Protected

Are walls, roof, & screens required for temporary food facilities? Could canopy facilities be used or do they need actual booths?

The FOOD CODE requires protection against the entry of insects and rodents. Windows and doors kept open for ventilation shall be protected against the entry of insects and rodents by 16 to 25 mesh screen, properly designed and installed air curtains, or other effective means. Other effective means may include the storage and handling of food, equipment, utensils, linens, and single service articles in covered containers or by using other methods in a manner that would protect the items from insects and rodents. Such precautions do not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting conditions.

Can food boxes be in rooms with exposed rafters and joists?

Yes, but the room must be kept clean.

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[2] American Society of Sanitary Engineering.

[3] Canadian Standards Association.

[4] American Water Works Association.

6-301.11 Handwashing Cleanser, Availability

Is there scientific evidence that the use of bar soap is acceptable in food establishments?

Yes. The proper cleaning of hands includes mechanical action, the use of a hand cleanser to remove particulates/organic matter, and complete rinsing. The FOOD CODE allows three options for hand cleansers: liquid, powder, or bar soap.

6-303.11 Intensity (of light)

Is the inspector going to have to use a light meter to measure all the different lighting requirements? Is that now part of the routine inspection?

Light intensity has long been a requirement, and we anticipate no change in the way this requirement is applied. See discussion on pH meters. Adequate lighting is needed where safety is a factor for employees, equipment operations, and cleaning of rooms. Compliance with minimum illumination levels ensures soil that is present is visualized and removed.

6-306.10 Service Sinks

What time frame can we use to install a service sink?

Time frames based on reasonable accommodation may be granted in low risk settings.

What time frame can we use to install a 3-compartment sink to replace a 2-compartment sink?

Again, it depends on the activities taking place in the establishment and whether these warrant reasonable accommodation.

Chapter 7, Poisonous or Toxic Materials

7-204.11 Sanitizers, Criteria

How is an inspector going to know if certain chemicals, like sanitizers are approved for certain uses – like food contact surfaces?

Chemical sanitizers must meet the requirements specified in 21 CFR 178.1010, which includes safe concentrations of approved sanitizers. A copy of 21 CFR 178.1010 is provided among those items of the FOOD CODE CD distributed to each local health department. It may also be downloaded from the MDA website.

All products listed in the United States Department of Agriculture (USDA) *List of Proprietary Substances and Nonfood Compounds*, including sanitizers, are now listed in the NSF White Book. (The NSF White Book replaces the program formerly administered by the USDA and discontinued in February 1998.) The listing includes sanitizers that meet 21 CFR 178.1010. In addition to listing, registered products may carry a NSF Registration Number and NSF Mark directly on the product label. The NSF "White Book" may be referenced on the NSF website at www.nsf.org/usda. For more information, contact NSF International at 888-NSF-FOOD, or by e-mail at nonfood@nsf.org.

The Wisconsin list of approved sanitizers, which contains products tested for efficacy in destroying pathogens to a slag reduction, 99.99999% kill, is also contained in the NSF White Book.

Chapter 8 Compliance & Enforcement

8-103.10 Modification and Waivers

Several restaurants now have variances from Act 368. Will these remain in effect after Nov 8, 2000? Or will these facilities be required to request these variances again under the new law?

The Food Law delegates local health department's the authority to grant variances to regulatory requirements on a case by case basis. Local health departments will want to reevaluate existing variances to ensure that they are consistent with FOOD CODE requirements. There is no established deadline for accomplishing this but it should be done in a timely manner.

Food Code Q & A

8-304.10, Responsibilities of the Regulatory Authority

How are all the establishments going to get copies of the FOOD CODE?

- The FOOD CODE can be down loaded from the Food and Drug Administration web site at www.fda.gov.
- Regulators can share a copy of the order form found in the back of each spiral bound FOOD CODE. The spiral-bound version, which includes the preface, code, and nearly 300 pages of reference material, including model forms, guides, public health reasons and other information is available as order #: PB99-115925 from U.S. Dept. of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161(Website: www.ntis.gov); Phone: 1-800-553-NTIS (6847).
- Single copies of Chapters 1-8 are available at no charge from MDA upon request. The MDA publication does *not* includes the seven annexes of reference material, model forms, public health reasons, and other information.

8-405.11

Do all critical violations including the absence of a hand-washing sink need to be corrected within 10 days?

Section 8-405.11 requires all critical violations be corrected at the time of inspection. The regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days. If a correction of a critical violation, such as a sink installation, is not possible immediately, the food activity or menu may be limited or some other means of temporary compliance may be initiated until the correction is made and the establishment resumes normal operation.

What is the recommended time frame for complying with the demonstration of manager knowledge.

This decision must be made on a case by case basis. A specific action plan will need to be discussed with each operation and will vary depending upon the scope of activity, the degree of deficiency, and other factors.